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May 23, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

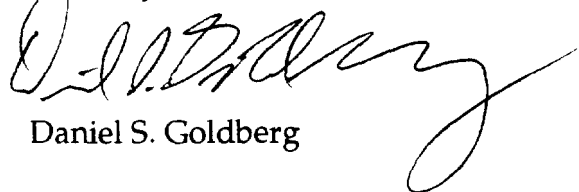
Re: PR Docket No. 89-553, PP Docket No. 93-253 and GN Docket
No. 93-252 Ex Parte Presentation

Dear Mr. Caton:

This letter reports that representatives of RAM Mobile Data USA Limited Partnership (Jonathan L. Wiener and Daniel S. Goldberg) met today with members of the Commission's staff (David Furth and Amy Zoslov) to discuss issues relating to technical and auction rules for the 900 MHz specialized mobile radio service. The parties' presentation is reflected in the attached memoranda, two copies of which are hereby submitted for the public record in this proceeding pursuant to 47 C.F.R. § 1.1206(a)(1).

If there are any questions in this regard, please contact the undersigned.

Sincerely,



Daniel S. Goldberg

cc: David Furth
Amy Zoslov

TECHNICAL RULES FOR 900 MHz SMRS

- Wide area licenses should be granted. Wide area operations of existing systems should be protected by the more explicit adoption of a single license, service area concept. In particular, it needs to be clear that existing systems can move around within existing coverage area, including the relocation of existing sites, without loss of protection.
- Incumbents should be permitted to add sites as long as their interference areas (22 dBu contours) are not expanded. Allowing construction of new sites as long as 40 dBu contours are not expanded does not have the same effect, and can severely limit existing systems in their ability to fill in coverage without any corresponding benefit to new MTA licensees.
- Secondary sites should be continued to be permitted. Prohibiting them may slow the provision of service to the public without offering any corresponding needed benefit to the MTA license.
- An existing licensee's preexisting sites should not be subject to forfeiture if the incumbent who owns an MTA license does not satisfy the coverage requirements in an MTA. This discourages incumbents from participating in auctions and punishes them disproportionately for failing to meet coverage requirements. Incumbent systems that need to expand but do not, as recognized by the Commission, offer the kind of ubiquitous consumer-oriented services that necessarily require that each and every inch of an area be covered should not be given only the Hobson's choice to forgo expansion at all or risk everything on the hope that the market will sufficiently develop fast enough to support the aggressive construction requirements set forth in the rules.

AUCTION RULES FOR 900 MHz SMRS

A. Bidding credits should not apply on encumbered blocks:

- Open invitation to greenmail; on heavily built blocks, only value to non-incumbent is to "sell" frequencies to incumbents;
- Capital that could be used for system expansion and improvement instead will go toward paying off speculators; construction that should be done now will be further delayed while those who need frequencies to complete their systems try to buy it from those who have no use for it other than to sell it to incumbents;
- Rules against unjust enrichment will not prevent the "sale" of frequencies, although it may require such transactions to be styled as management contracts and the like.

B. The statute does not require bidding credits on encumbered blocks:

- The statute does not require auctions to expansion of existing services.
- The statute does not require bidding credits.
- The statute does not require bidding credits on all blocks or any blocks on which existing systems operate.
- The statute has goals other than auctions and bidding preferences that must be considered:
 - the development and rapid deployment of technologies;
 - the efficient and economic use of electromagnetic spectrum;

- the use of “threshold qualifications, service regulations and other means” to avoid mutual exclusivity.

None of these goals will be served by adopting rules that encourage bidding by those who have no intention of actually constructing and operating a communications system.

C. If there are to be bidding credits, particularly on incumbent blocks, they should be relatively small (no more than 10%).

D. Bidding credits, if given, should be limited to small businesses.

E. Distinguishing among encumbered blocks, with bidding credits on some but not others, is difficult:

- Hardship for existing systems singled out to compete against those with bidding credits, particularly if significant bidding credits are given.
- If Commission determines that bidding credits must apply to encumbered blocks of frequencies, it should look at each block in a given MTA to identify least encumbered.
- No absolute requirement that the same block of frequencies in every block be available for credits (existing systems operate on different blocks in different areas).
- Least encumbered block would be most useful to new entrant if it really wanted to build. Least encumbered block also suggests that incumbent may have less need to expand.

F. Upfront payments should be required for each block for which bidders wish to be eligible. Auction procedures should reflect understanding that presence of existing systems makes blocks not fungible. Bidders, therefore, should be required to identify all markets on which they wish to bid and to make an upfront payment for each block of frequencies for which they wish to bid. Otherwise, procedures may create appearance of mutual exclusivity, where none in fact exists.

G. Information about existing systems. It should be made clear that licensees providing information about their existing systems to prospective bidders may do so without risk of charge of collusion.

H. Expedited action is needed. 900 MHz systems have been held too long in limbo. It is time to move on with the licensing process.